IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 894 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITENDRAKUMAR JAYANTILAL DHRUVA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 894 of 1988

MR KB ANANDJIWALA for Appellant No.

MR MANOJ N POPAT for Appellant No.

MS NANDINI JOSHI, LD.APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 10/05/2005

C.A.V. JUDGMENT

The appellant is the original accused/convict of

Special Case No.5 of 1984 tried by the learned Special Judge, Jamnagar, for the offences punishable under Section 161 of the Indian Penal Code r/w. Sections 5(1)(A), 5(1)(D) and 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as 'the Act'). The learned Judge imposed different penalties on conviction i.e.under Section 5(1)(D) r/w. 5(2) of the Act rigorous imprisonment of one year and fine of Rs.500/- and six months' rigorous imprisonment for the offence punishable under Section 161 of the Indian Penal Code. The learned Special Judge has acquitted the accused for the offence punishable under Section 5(1)(A) r/w. 5(2) of the Act.

2. To appreciate the rival contentions placed before the Court, it will be necessary to have a close look on the case of the prosecution.

2.1 According to the prosecution, the petitioner is a public servant serving as Talati-cum-Mantri of village Nana Thavariya, Dist.Jamnagar and at the relevant point of time, he was caught by the police in a trap.

2.2 One Girdharbhai Popatbhai-orig.complainant wanted to have a bore in his land for the purpose of irrigation of the agriculture land and, therefore, necessary sanction from Mamlatdar as well as Taluka Development Officer (TDO) was required as he intended to lay down a pipeline from the place of bore to his agriculture land and for expediting the issue of such a sanction, the appellant-accused demanded an amount of Rs.1500/- by way of illegal gratification.

2.3 It is the say of the prosecution that on negotiations, the matter was ultimately settled at Rs.1200/- and initial payment of Rs.500/- was made by the complainant and remaining amount of Rs.700/- was to be paid after the work is over i.e. on sanction from the respective authorities.

2.4 The complainant met the accused on 8th February, 1984 at village Nana Thavariya and demanded Rs.700/-, as according to the appellant-accused necessary sanction was granted.

2.5 In turn the complainant informed the appellant-accused that on the next day i.e. on 9th February, 1984, he would give the amount at the residence of the appellant-accused at about 08-00 p.m. Before 8th February, 1984, the appellant-accused made demand of Rs.700/- but when the amount was asked positively on 8th February, 1984, the complainant had agreed to pay it on

9th February, 1984 at about 08-00 p.m. Undisputedly, the appellant-accused is the resident of Jamnagar, District Head Quarter. Since the complainant did not want to pay the amount of bribe, a trap was arranged with the help of the officers of the Anti-Corruption Bureau (ACB) and it is alleged that the appellant-accused had accepted the amount on 9th February, 1984 at about 09-00 p.m. and thereby committed offences mentioned above. After usual investigation when the Police found that the accused had committed offences, on receipt of sanction from the competent authority, chargesheeted the accused and the learned Special Judge by judgment under challenge dated 17th October, 1988 convicted the accused for two offences and acquitted for one as mentioned above.

2.6 The said Girdharbhai Popatbhai Patel i.e. orig.complainant, is the resident of village Nana Thavariya and was holding agriculture land bearing Survey No.124 in the sim of the said village. There is a small river flowing nearby the said village. The appellant-accused was posted as Talati-cum-Mantri in the year 1983. The complainant was having a well in his field and as the said well was not having sufficient water, the complainant wanted to erect a bore in "Gochar-Kharaba" land owned by the Government. Therefore, he contacted the Talati-cum-Mantri and informed him about his plan of construction of a bore.

2.7 The complainant gave an application to the Mamlatdar for necessary permission on 23rd November, 1983 and also for permission to install the pipeline from the the said bore to his field. PW(6) Mansukhlal Sheth, Mamlatdar, got the field inspected through the Revenue Circle Inspector Mr.Gondaliya and on report of Mr.Gondaliya, it was found by the Mamlatdar that the complainant had already constructed the bore and the pipeline was also installed. As per the report submitted by the Circle Inspector, the land in question is not located within the territorial jurisdiction of the Mamlatdar as Revenue Officer but it is in the territory and jurisdiction of T.D.O. All the papers in turn then were sent to the T.D.O. on 6th January, 1984. By that time, the complainant had submitted one application to the T.D.O. on or about 5th December, 1983. The said application is on record at Exh.10, whereby the complainant sought for permission to construct bore and install the pipeline. One Circle Inspector Mr.Hamirbhai Malabhai on instructions of the T.D.O. had visited the place on or about 10th December, 1983 and had submitted his report. The said Hamirbhai had prepared a rough map and after calculating the relevant revenue record i.e.

Form No.8-A, 7/12 extract of Revenue Survey No.56/2, "Gochar-Kharaba" land and obtained a positive opinion of Gram Panchayat of Nana Thavariya. He also prepared Rojnama in the format of panchnama and thereafter, he submitted the report. This report is at Exh.30. On the strength of facts available on record, the T.D.O. accorded sanction/permission on 13th January, 1984, and ordered for installation of pipeline as well as allotment of 02-00 gunthas land for bore. A formal resolution granting permission was passed by Executive Committee of Taluka Panchayat on 25th January, 1984 and this document is on record at Exh.19. It appears that as now formal intimation only was received till February, 1984, the complainant told the appellant-accused to help him in expediting the matter in getting the order of permission cum allotment of land.

2.8 On the fateful day of 9th February, 1984, the complainant went to the office of the ACB at about 12-00 p.m. and gave his complaint to the Police Inspector Mr.Sarvaiya. Thereafter, the complainant was told to come again at about 04-00 p.m. on the same day. Meanwhile, the Police Inspector Mr.Sarvaiya, who headed the raiding party, had arranged for two panchas and both these panchas were asked to remain present at about 04-00 p.m. at ACB office when the complainant was called. The other members of the raiding party were also present in the office of the ACB. The panchas were informed about the grievance expressed by the complainant in the complaint and thereafter, usual procedure and showing demonstration of use of anthracene powder, etc. was performed and explained to the complainant and both the panchas. It is contended by the prosecution that the currency notes of Rs.700/- were produced by the complainant, which were thereafter smeared with anthracene powder. The panch no.1 was told to remain with the complainant and he was instructed, as narrated in the panchnama, to hear the conversation and to see the transfer of muddamal currency notes, if passed over from the complainant to the appellant-accused.

2.9 Ultimately at about 08-00 p.m., the raiding party with both the panchas and complainant went to the residence of the appellant-accused. On first attempt, the complainant and panch no.1 were told by a lady from the house of the appellant that the appellant had gone out of station and would return within half an hour.

2.10 It is the say of the prosecution that thereafter the complainant and panch no.1 returned to Mr.Sarvaiya, Police Inspector, and informed him about the same.

Thereafter, again at about 08-45 p.m. both these prosecution witnesses went to the residence of the appellant-accused and by that time, the appellant-accused had returned home. The appellant-accused had put on 'Lungi' and 'Banyan' and on seeing the complainant, the appellant asked him as to when he had come and the complainant explained that he had come earlier but as he was not present, he had come again. It is the say of the prosecution that the appellant in turn replied that he returned home at about 08-30 p.m. as he was out of station. The appellant thereafter took both of them to the room on the first floor and both set on a cot lying in the room. The appellant asked the complainant about the panch no.1 and the complainant as decided told that the said person is his cousin brother (Masi's son). It is alleged that then a positive demand was made by the appellant and the complainant was asked as to whether he had brought the amount and if he had brought the same then he should give it to him and thereafter alleged to have said that the appellant had taken a lot of trouble in getting the permission and thereupon he demanded money. The complainant thereafter took out the smeared muddamal currency notes from the left side pocket of the shirt with his right hand and the appellant accepted the amount with his right hand. It is the say of the prosecution that then the appellant counted the currency notes with both the hands and put the said notes in a file lying on the books in the cupboard. Thereafter, the complainant came out of the entrance room popularly known as 'Dehli' on excuse of replying for natural call and spread his left hand on the head and thereby gave a signal. It is contended by the prosecution that on the signal, the Police Inspector Mr.Sarvaiya of the raiding party and other members rushed to the room on the first floor and carried out the trap. On gathering instructions from the appellant, the Police Inspector Mr.Sarvaiya found that the muddamal currency notes are lying in the file and it was there in the cupboard, which was there in the room. Then the experiment by using U.V.(ultraviolet) lamp was carried out. It is the say of the prosecution that while examining the hands of the appellant, both the hands including the finger tips were found with fluorescent blue colour indicating presence of anthracene powder. In the same way, the clothes put on by the appellant were also found with fluorescent marks on certain places. Thereafter, on instructions from the Police Inspector Mr.Sarvaiya, the panch no.1 took out the currency notes from the file and according to panch no.1 who took out the currency notes, were also examined under U.V. lamp and when ultimately it was found that the said notes are the very notes which were smeared with

anthracene powder and described in the panchnama and thereafter the second part of panchnama was drawn.

4. Mr.K.B.Anandjiwala, learned counsel appearing for the appellant-accused has taken me through the oral evidence, practically of all witnesses and mainly of the complainant-Girdharlal Popatlal and panch no.1-Nitin Jayantilal Trivedi. He has also pointed out certain portion of the oral evidence of Police Inspector Mr.Sarvaiya, the officer heading the trap.

4.1 The oral as well as documentary evidence referred to by the T.D.O., J.L. Mehta; Circle Inspector, Hamirbhai Makwana and Junior Clerk of District Panchyat, Jamnagar, Harish Mehta, are also considered by me. According to him, the statement recorded of the appellant-accused under Section 313 of the Code of Criminal Procedure is also very relevant because he has denied the whole prosecution case and it is alleged that absolutely a false case has been created against him and the complainant is the person responsible for constructing a bore without permission from the competent authority and an encroacher of Government land as he had already constructed the bore on the Government land and installed the pipeline passing through the Government land upto his field.

4.2 It is said that the complainant as was suspecting that the appellant may initiate proceedings for these encroachments, he has attempted to make out a false case and the appellant has been victimized by one of the groups of village panchayat politics. It is also alleged that the complainant belongs to the rival group.

4.3 The say of the accused is that the panch no.1 being a Government servant has given absolutely false evidence under pressure and apprehension and his story is mechanical. It is alleged that from the very beginning of the case on each day of hearing, the panch no.1 was asked to sit in the office of the District Superintendent of Police (DSP) and two police personnel were posted to guard him and the evidence of Mr.Sarvaiya, according to the appellant, is totally false and as he is interested in the result of the case, he has led the evidence as per the story unfolded by the prosecution.

4.4 The Court is aware that the suggestions made by the learned counsel for the defence are not binding to the appellant and the case of the prosecution should stand on its own leg. However, it is relevant to refer to the suggestions made to the witnesses by the appellant

in light of the defence theory. The say of the appellant if appreciated is that on his return at about 08-30 p.m., after changing his clothes when he was taking his dinner, at that time, the complainant came to his home and as he was taking dinner, the complainant was asked to go upstairs and to sit there and after sometime when the appellant was still taking dinner, the complainant came down by saying that he would come in a short while and thereafter, the complainant along with panchas and members of the raiding party entered the house and at that point of time, the appellant was standing in the 'Osri' after completing his dinner.

4.5 To explain contingency as to the presence of anthracene powder in his hand, it is suggested that on arrival the complainant shook his hands with the complainant and thereafter the police caught the appellant and he was taken to the room for experiment under U.V. lamp. He has denied the other aspects unfolded by the complainant and panch no.1, examined by the prosecution.

4.6 The backbone of the arguments placed by Mr.Anandjiwala is that the complainant is an accomplice and in absence of cogent and convincing corroborative evidence, the version of the complainant could not have been accepted as true or reliable and the appellant had no concern with the procedure undertaken by the office of their Mamlatdar or T.D.O. and his opinion even would not make much difference in granting permission to construct a bore in Government Kharaba land or to install the pipeline through such land.

4.7 Mr.Anandjiwala has attempted to point out that neither at any stage the appellant has taken part in the process nor at the instance of the appellant, the said permission is granted. The appellant has not even attempted to see that the permission granted by the T.D.O. is expedited because there is no documentary evidence on record to show this aspect alleged by the prosecution.

4.8 It is further argued by Mr.Anandjiwala that when the complainant himself has admitted that he paid the amount of Rs.500/- initially as bribe and had agreed to pay the remaining amount of Rs.700/-, itself changes the status of the complainant. The complainant is an accomplice and an offender in stricto senso, so far as the intention of the legislature is concerned. The learned trial Judge has ignored this material aspect and accepted the say of the complainant as vital evidence led

by the prosecution. On the contrary, the learned trial Judge ought to have condemned the witness complainant on the point of demand of amount of bribe which is one of of the important ingredients and vital part of the case of the prosecution in a case instituted for the offence punishable under the Prevention of Corruption Act.

4.9 Placing reliance on the decision of the Apex Court in the case of Hari Dev Sharma v. State, Delhi Administration, reported in AIR 1976 SC 1489 and the ratio of the decision in the case of Anantrai Lalji Pandya, reported in 1982 Cr.L.J. 1883, where the Court held the evidence of complainant is not trustworthy. It is argued by Mr.Anandjiwala that in these cited cases, the part payment was made at the time of demand and for making payment of remaining amount the trap was carried out and it is held that acceptance of part payment is not in consonance with the original demand and hence, the demand aspect cannot be said to have been established by the prosecution and due to this reason, the whole case of prosecution fails.

4.10 According to Mr.Anandjiwala, in the present case, an amount of Rs.1200/- was fixed even as per the case of the prosecution and on that very day, an amount of Rs.500/- was paid and, therefore, in absence of any corroborative evidence from the accomplice, so far as the demand and acceptance of Rs.700/- is concerned, the acceptance should be held to be not in consonance with the original demand and the benefit of doubt should at least be accorded to the appellant-accused.

4.11 According to Mr.Anandjiwala, the recent trend of recording complaint initially on a plain paper is not a healthy practice and no entry in this regard is even made in the station diary and therefore, before starting any proceedings in furtherance of lodging of a complaint, the offence is required to be registered. Though the complainant has given complaint disclosing the cognisable criminal offence, no FIR was registered and the complaint was reduced in writing on a plain paper and no entry in the station diary was made. Without making any formal note in the Police Station diary, the act of calling of trap witnesses cannot be said to be an official act. This irregularity is material as the same prejudices the transparency in the investigation.

4.12 Mr.Anandjiwala, learned counsel appearing for the appellant-accused, has placed reliance on one observation of the Apex Court in the case of Mohindro v. State of Punjab, reported in 2001 (3) Crimes 190 and it would be

beneficial to reproduce the same which is as under :

> "There could not have been any inquiry without registration of the case and registration of case could not have been denied on the basis of any such alleged inquiry."

4.13 In this cited decision, the Apex Court was appreciating the evidence led by the prosecution and more particularly, the complainant-lady. The complainant-lady went to the police station for registration of a case against the alleged accused person but the police never registered the case and never put the law in motion. Therefore, the complainant-lady approached the Hon'ble High Court to get the case registered and thereafter, she approached the Hon'ble Supreme Court. It was reported before the Hon'ble Supreme Court that there had been an inquiry and therefore, the Hon'ble Supreme Court observed that :

> "We fail to understand as to how there can be an inquiry without registering a criminal case."

4.14 The grievance expressed by Mr.Anandjiwala on behalf of the appellant is that the registration of a cognizable offence prior to investigate any case flows from registration of a cognisable offence alone. No Police Officer can collect any direct or indirect evidence of cognizable offence and the same should be treated only inquiry "in nature". Though Mr.Anandjiwala has pointed out that any statement given by the appellant in the nature of explanation is inadmissible in evidence and the learned trial Judge has indirectly attempted to place reliance on the statement made by the appellant because as per the case of the prosecution, the place where the muddamal currency notes were lying was indicated by the appellant in response to the queries raised by Mr.Sarvaiya, Police Inspector. This portion of evidence, if ignored, then it becomes a doubtful case.

4.15 One more point placed by Mr.Anandjiwala is that the FIR at Exh.8 is registered after drawing second part of panchnama. It came to be registered on 9th February, 1984 at about 21-00 hours i.e. time of concluding the trap and thereafter, at 23-45 hours the offence came to be registered. So the FIR at Exh.8 was given with regard to the incident that had taken place at 21-00 hours, whereas the contents of the said FIR shows that the same was with regard to demand as alleged by the complainant and it was disclosed at 12-00 hours. There is no

reference about laying of the trap and success of trap in question. The FIR is absolutely silent about the aspect that had taken place after 20-00 hours and before 23-45 hours, hence, such a complaint should be deprecated.

4.16 Another point pressed into service by Mr.Anandjiwala is that selection of panchas especially panch no.1, Nitin J. Trivedi, Junior Clerk, (PW-2, Exh.30) was not independent or objective. The panch no.1 is serving in the office of the Executive Engineer, Jamnagar. He was specifically called for the raid in question. Mr.Anandjiwala has further argued that this panch no.1 ought to have been branded as a "selected panch". The panch no.1 has given a graphic picture of the trap as mentioned in the panchnama and it emerges that he was tutored. On the one hand, this panch no.1 has accepted that he does not remember his previous residential address and on the other hand, he has unfolded all the details of panchnama. This panch no.1 has also said something contrary to the complainant qua the conversation as to the demand and acceptance alleged to have been made by the appellant-accused. The panch no.1 has deposed that on seeing the complainant, the appellant-accused told him to come upstairs and thereafter, the complainant and the panch no.1 went upstairs and set on a cot. In para:5 of the deposition, he says that the accused had asked the complainant about the identity and presence of panch no.1 and in response to the question, the complainant introduced panch no.1 as his cousin brother (Masi's son). This part of evidence does not exactly corroborate with the evidence as to the conversation given by the complainant. So the variation in the evidence of conversation should be treated very relevant and the explanation offered by the accused as to presence of anthracene powder on his both the hands should be accepted as reasonable and probable explanation. Mr.Anandjiwala at the conclusion of this oral submissions, has placed on record his say by way of written arguments.

5(i) It is rightly argued by the ld.APP that the trial Judge has appreciated all the judgments cited by ld.defence counsel. The trial Court is in agreement that there is threshold discussion in paras:21 to 31. In the similar way, legal submissions made by the ld.APP are discussed in paras:32 to 38. These all the discussion has made the order of conviction, a reasoned order.

5(ii) I have considered the written submissions also and some of the part of the said written submissions mainly concentrates on the answers given by the

complainant as well as panch no.1 during cross-examination. But this contradictions are found insignificant and are not able to cut the case placed by the prosecution. It is true that panch no.1-Nitin Jayantibhai Trivedi in his deposition (para:17) has accepted that he does not remember each detail of first part of the panchnama but on plain reading of para:17, it emerges that this witness has remained consistent and all the material part has been stated by him on oath. He has also described procedural formality that the ACB Police had made while drawing panchnama of the first part. Though this witness has accepted that the Police Inspector Mr.Sarvaiya had not asked the complainant to introduced the witness (panch no.1) as cousin brother (Masi's son), but the fact remains that both the witnesses i.e. complainant and panch no.1 are found consistent on this aspect. Though the words told during conversation are not found exactly similar in the deposition of the complainant and panch no.1, however, substantially both these witnesses have remained consistent. The conversation had taken place on "the work of bore erected on the land of the complainant and it was asked by the accused whether the complainant has brought money." So this is a case of demand made specifically by the appellant-accused in presence of panch no.1. So there is no contribution on the point that a demand was first made by the appellant, so it cannot be said legally that the story told by the complainant and the panch no.1 is contradictory or materially different. It is true that on such occasion, limited words are being used and conversation normally does not last for more and, therefore, there is a little scope of missing relevant part of discussion or conversation. However, it would not be legally proper to accept that both the witnesses should reproduce the exact words chronologically and in the same sequence when they are asked to state the facts on oath before the Court. When they are materially corroborating with each other and the subject referred to, are found same, then substance led by them if found consistence then their evidence normally should not be discarded. The learned trial Judge in its true perspective has appreciated this vital and important part of evidence.

6. The defence placed by appellant becomes relevant when it is suggested that the appellant has been falsely implicated and that too on a political rivalry or victimization. The panch no.1 though has accepted that the panchnama was shown to him prior to his deposition for sometime and on the day of deposition he had seen the panchnama. But he was categorically denied that he was

made to sit in the office of the D.S.P. along with the officer of the ACB Office. He has also denied that on arrival from the Ahmedabad, he was althroughout in the company of ACB Officers and he was moving with ACB personnel. On the contrary, it has come on record that he was at Ahmedabad and if the ACB officials give him a panchnama either on his demand or at their instance, it would not be possible for this Court to conclude that this part by itself would make the witness tutored because he was asked to depose the facts that had occurred before some years. Even on occasions the Court permits to see either panchnama or station diary or such official documents to refresh the memory of witness, whether panchnama is a witness or a police official. On the contrary, the Court is of the view that on application of the witness, the Court should grant permission to go through the panchnama when he is called to assist the Court by unfolding the true story. Refreshment of memory may help the Court in arriving at a true conclusion. It is true that if such permission is prayed and granted, the same is for few minutes and not for a long time. When it is argued that a particular witness should be branded as a tutored, then who taught him should also come on record prima facie and for what period this witness was available for such or similar tuitions, obviously becomes more relevant because in such cases, the panchnamas are lengthy and most of the part of the panchnamas are procedural. The Court should act consciously while branding a particular witness a tutored because it becomes stigma for an individual. So unless it becomes clear that a witness was tutored from the deposition, from the Court manner and conduct prior to his entry in the witness box, it would not be proper to discard the evidence of a witness saying that he is a tutored witness.

7. The documentary evidence led by the prosecution clearly supports the say of the complainant and it would not be possible for this Court to say that the documentary evidence brings any infirmity in the case of prosecution. It is true that the facts emerging from the documentary evidence and the oral evidence led by Mr.Jugalkishor Labhshankar Mehta, PW-3, TDO; Hamirbhai Malabhai Makwana, PW-4, Circle Inspector and Mansukhlal Chandulal Sheth, PW-6, Dy.Mamlatdar, that prior to the date of formal sanction by the TDO, the complainant had already erected a bore and an encroachment was found on the Government land and as per PW-6, Mansukhlal, Hamirbhai had recommended the case of the complainant because the things were already there and ultimately after performing due procedure, permission was granted.

So it can be said that the complainant was anxious not for permission but for indirect regularization. This part of fact situation on the contrary helps the case of the prosecution and not the defence. Though Mr.Anandjiwala has enlarged this argument in detail and enlargement made by Mr.Anandjiwala is with a view to condemn the conduct of the complainant and to assail his credibility, but following facts are found relevant to the Court after reading the depositions of all the witnesses examined by the prosecution and the judgment under challenge :

(i) No role of the appellant in actual permission granted by TDO was there, however, he being a Talati-cum-Mantri is the main link between the Revenue Administration of the State and the villagers including the complainant.

(ii) This is a case of encroachment of land already made and the complainant was anxious to have formal permission.

(iii) The Executive Committee of the Taluka Panchayat has passed a formal resolution and it would not be possible for this Court to infer that the complainant was not knowing this aspect.

(iv) The appellant though had taken over as Talati-cum-Mantri in the year 1983, he himself has never reported any encroachment prior to the date of the application for permission made by the complainant to the higher officials or he requested to initiate summary eviction proceedings. The regularization of encroachment if is not uttered then at least the appellant could have informed the TDO and Executive Committee of the Taluka Panchayat that the case placed by the complainant is not of fresh permission but of regularization of an encroachment already made and, therefore, it is not possible for this Court to accept the say of Mr.Anandjiwala that the accused had no role to play in the entire procedure.

(v) Merely because the complainant was a wrongdoer/encroacher, it would not be

legal to discard his version in toto. On the contrary, the Court should accept that such a person must be more anxious and eager to have a letter of formal sanction/permission from the competent authority i.e. TDO.

(vi) Why a villager was asked to come down to appellant's residence or accorded permission to come down to his residence at odd hours of the day i.e. at night hours and that too in the District Head Quarter at Jamnagar. This conduct of the accused cannot be ignored.

(vii) If a farmer even visits the residential premises of a Talati-cum-Mantri of his village, Secretary of the Panchayat, then at least he should not be treated as a guest though he was at his dinner. The conversation that had taken place, as narrated above, between the appellant and the complainant when the complainant visited the said house second time, even is not accepted to be true, then also the act of asking the complainant as well as the panch no.1 to go upstairs discloses element of some hidden understanding between the complainant and the appellant.

(viii) The explanation as to the presence of anthracene powder on both the hands given by the appellant is not found satisfactory. Even if a person shakes hands, then normally both the hands would not have indicated the presence of anthracene powder under U.V. lamp. The recovery of muddamal currency notes from the cupboard and that too from one file corroborates with the say of the complainant and the panch no.1 that the amount was accepted and the muddamal currency notes were counted by the appellant.

(ix) Transfer of money from the complainant to appellant in presence of panch no.1 clearly establishes acceptance of illegal gratification. It is not a defence that the amount accepted was not an illegal

gratification or a bribe amount and the same was a genuine acceptance towards some other transaction.

(x) The appellant has failed in rebutting the legal presumption and the leaned trial Judge is found right in raising the presumption and this Court also does not find any strength in the submission of Mr.Anandjiwala that the presumption is reasonably rebutted and there are other infirmities in the case of prosecution.

(xi) The contradictions and omissions pointed out by Mr.Anandjiwala are not found material and they are not found fatal to the case of the prosecution. On the contrary, this is a case where the prosecution has remained consistent from the very beginning and as per the Rule of best evidence, the story unfolded by the prosecution gets corroboration from the evidence of panch no.1 as well as Revenue Officers and the documents produced and proved by them.

8. In view of totality of facts and circumstances of the case, and reasons above recorded, I do not find any merit in this appeal and the present appeal is required to be rejected. However, the Court is aware about the observations made by the Apex Court in the case of State of Andra Pradesh v. V. Vasudev Rao [2003 AIR SCW 6555] that the Court normally should not impose punishment less than minimum prescribed. It has been observed in the above referred decision that the age of the accused was 75 years and the case was pending for 14 years are not special reasons to reduce the sentence below minimum one year prescribed. However, in view of the peculiar facts and circumstances of the present case, there is some force in the alternative oral submissions advanced by Mr.Anandjiwala that when the petitioner was caught, he was a young man and since then he remained under suspension and thereafter, he has lost his job. The period of one year imprisonment would make him practically disabled in resettling his life. On confirmation of the conviction, the appellant would suffer tremendous financial loss and other benefits that have been earned by other Government employees in last several years and the rigorous imprisonment of one year is likely to add further instability, not only to the petitioner but also to the socio-economical life of the

entire family. The sword of uncertainty on account of pendency of present appeal for several years has also hammered the head of the appellant and that fact situation has resulted into tremendous mental stress and discomfort, which should be taken into account. Considering the protraction of the proceedings and other fact situation as well as circumstances emerging from record, it would be sufficient if the petitioner is asked to undergo the substantive sentence for a period of six months only and to order that the same should run concurrently. The Court is not inclined to disturb the order imposing fine for the offences committed by the appellant, which would meet the ends of justice.

9. In the result, the appeal of the appellant is hereby partly allowed. The impugned judgment and order of conviction passed by ld.Special Judge, Jamnagar, in Special Case No.5 of 1984, convicting the appellant-accused for the offences punishable under Section 161 of the Indian Penal Code and Sections 5(2) r/w. 5(1)(D) of the Prevention of Corruption Act, is hereby confirmed. However, the order imposing rigorous imprisonment for one year for the aforesaid offences is hereby reduced to six months and the appellant is hereby ordered to undergo rigorous imprisonment for only six months. The punishment shall run concurrently. The order imposing fine remains unaltered. It is clarified that the order imposing sentence in default of making payment of fine shall also remain unaltered.

10. The bail bonds of the appellant-accused stands cancelled. However, considering the period for which the present appeal had remained pending for disposal before this Court i.e. since 1988, the appellant-accused is given time to surrender till 30th July, 2005, to serve the sentence.

(C.K. Buch, J)

Aakar